

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 SAMUEL COHEN,
15 Defendant.

11 No. CR 10-00547 CRB

12 **ORDER:**

13 **(1) GRANTING APPLICATION FOR
FURTHER EXTENSION OF TIME;
(2) GRANTING APPLICATION FOR
ORDER TO FILE OVERSIZED
BRIEF;
(3) DENYING MOTION TO ALTER
OR AMEND**

17 Defendant Samuel Cohen's applications for a further extension of time to file a
18 reconsideration motion (dkt. 597), and for permission to file an oversized brief (dkt. 598), are
19 GRANTED. Cohen's Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil
20 Procedure 59(e) (hereinafter "Mot."), filed as an attachment to the application for permission
21 to file an oversized brief, is DENIED.

22 Cohen's Motion argues that the Court erred in evaluating the arguments made in his
23 Motion to Vacate, Set Aside, or Correct Sentence (dkt. 535) about his counsel's alleged
24 failure to (1) investigate possible defense witnesses, (2) use/investigate the "cabal evidence,"¹
25 (3) retain a forensic document or handwriting expert as to the Dillon and Mills declarations,

28 ¹ Cohen made a related argument about the "cabal evidence" in his third motion for a new trial.
See Mot. for New Trial (dkt. 446) at 8–11. The Court rejected that argument, see Criminal Minutes of
5/20/2015 (dkt. 463), and the Ninth Circuit recently affirmed the Court's denial of Cohen's new trial
motion, see United States v. Cohen, No. 15-10274, 2017 WL 1164430 (March 29, 2017).

1 and (4) retain a forensic document or handwriting expert as to the “Procinea evidence.”² See
 2 generally Mot. Cohen’s Motion does not alter the Court’s assessment of these arguments,
 3 nor persuade the Court that he has met the standard for Rule 59(e). See McDowell v.
 4 Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999) (en banc) (per curiam) (“A motion for
 5 reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances,
 6 unless the district court is presented with newly discovered evidence, committed clear error,
 7 or if there is an intervening change in the controlling law.”) (internal quotation marks
 8 omitted; emphasis in original). For the reasons provided in the Order, the Court will not alter
 9 or amend its judgment. Cohen’s ineffective assistance of counsel claims—the only claims
 10 that are the subject of this Motion—are fatally flawed because his counsel’s representation
 11 was not deficient, and, even if it was, Cohen suffered no prejudice in light of the
 12 “tremendous amount of evidence” of his guilt. See Strickland v. Washington, 466 U.S. 668
 13 (1984); Order at 12–13.

14 **IT IS SO ORDERED.**

15 Dated: March 31, 2017



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 17 CHARLES R. BREYER
 18 UNITED STATES DISTRICT JUDGE
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27 ² Cohen’s Motion argues that “The Court’s response conflates two sets of documents—one is
 28 the Declarations and Agreements signed by Dillon in 2004 and 2006. . . . Here the issue is the Procinea
 Agreements.” Mot. at 26. The Court’s Order in fact addressed the two arguments separately. See Order
 Denying Motion to Vacate, Set Aside, or Correct Sentence (dkt. 574) (hereinafter “Order”) at 9–15; *id.*
 at 22–23.